

1 IN THE UNITED STATES DISTRICT COURT

2  
3 FOR THE DISTRICT OF RHODE ISLAND

4  
5 \* \* \* \* \* C.A. NO. 06-501L

6 LEBOEUF, LAMB, GREENE &  
7 MACRAE LLP JUNE 19, 2007  
2:04 P.M.

8 VS.

9 DAVID STRACHMAN, et al

10 \* \* \* \* \* PROVIDENCE, RI

11  
12 BEFORE THE HONORABLE RONALD R. LAGUEUX,

13 SENIOR JUDGE

14 (Defendants' Motion to Dismiss)

15 FOR THE PLAINTIFF:

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24  
25 Proceeding reported and produced by  
computer-aided stenography

1 19 JUNE 2007--2:04 P.M.

2 THE COURT: Good afternoon, everyone.

3 The matter before the Court is Civil  
4 Action 06-5011, Leboeuf, Lamb, Greene & Macrae, LLP, vs.  
5 David Strachman, as the Administrator of the Estate of  
6 Yaron Unger, and others. The matter is here on the motion  
7 of the Defendants to dismiss this case under Rule 12(b).

8 Will the attorneys interested in this matter  
9 identify themselves for the record, please.

10 MR. MEDEIROS: Good afternoon, Your Honor.  
11 Matthew Medeiros, representing the Plaintiff. My colleague  
12 here at counsel table is Gail Gottehrer of the Leboeuf-Lamb  
13 law firm.

14 MR. STRACHMAN: David Strachman for the Ungars.

15 THE COURT: All right. It's your motion,  
16 Mr. Strachman, so I'll hear you first.

17 MR. STRACHMAN: Thank you, Your Honor.

18 Your Honor, we're here in a context that would be  
19 almost comical if it wasn't such a tragedy and such a  
20 travesty of justice.

21 This Court lived with this case, as the Court has  
22 indicated on several prior occasions, for years. There are  
23 300 pleadings in this file. The Court endured three  
24 motions to dismiss, eight written decisions, two appeals,  
25 numerous delays by the PLO and the PA, caused by their

1 attorneys in large measure.

2 And after two years of their refusal to satisfy  
3 their judgment and to comply with the order of this Court  
4 to pay the Ungars, after the matter had gone to the First  
5 Circuit Court of Appeals for the second time, after the  
6 Supreme Court declined to review this case further, we  
7 filed a motion for a creditor's bill, having been stymied  
8 for two years in collecting the judgment, after the PLO's  
9 lawyers in Rhode Island, New York and Washington all  
10 indicated that, in their words, quote, unquote, they will  
11 never pay this judgment, when we filed the creditor's bill  
12 in the spring or late spring of 2006, the Defendants  
13 failed to respond to the case, and this Court, Your Honor  
14 sua sponte ordered them to provide an answer to that  
15 creditor's bill.

16 They declined, and they appeared at a hearing on  
17 September 13th. Mr. Sherman, Deming Sherman, was here on  
18 their behalf indicating that he was taking no position with  
19 respect to the creditor's bill.

20 The Court, after reviewing the extensive materials  
21 that we provided along with our brief, granted the relief  
22 sought. And I want to review that very briefly,  
23 Your Honor, because I think it's extremely important.

24 We submitted to the Court an affidavit of an  
25 attorney in Israel who had reviewed a series of files that

1 were pending in the Israeli courts involving these very  
2 same Defendants, the PA and the PLO.

3 In four of those cases at the time,  
4 Attorney Coltof, who prepared the affidavit, found that the  
5 PA and the PLO had pledged assets contained in their piggy  
6 bank, which was the subject of other litigation in this  
7 Court, called the PIF, to pay for judgments against them in  
8 the terrorist context, cases in Israel by terrorism victims  
9 against the PA and the PLO.

10 The PA and the PLO, through counsel, came to  
11 Court, filed affidavits, we produced the affidavit, we  
12 translated one of them for Your Honor, and they say there  
13 is no need for prejudgment security for these cases in  
14 Israel because the PA has tons of money. It has so much  
15 money, it can satisfy these judgments. There is no need  
16 for prejudgment security in the form of a prejudgment  
17 attachment. Thus, the very asset, or assets, that are at  
18 issue in this case were literally pledged by the PA and the  
19 PLO to satisfy terrorism judgments.

20 We asked this Court for very simple relief that  
21 was not opposed by the PA or the PLO, and that was, very  
22 simply, to give us any rights that the PA has in the PIF,  
23 Palestine Investment Fund, its piggy bank, where it  
24 corralled all of their assets. And we filed a report by  
25 the World Bank indicating what they did. We filed their

1 own affidavits, we filed their own listing of assets,  
2 et cetera.

3 And the Court reviewed the record and said very  
4 carefully on the record that it had reviewed our filing,  
5 and based on the filing, there was sufficient information  
6 and evidence to grant the relief requested.

7 We also asked the Court, as a second measure in  
8 the creditor's bill, second measure of relief, to turn over  
9 to us whatever interest or whatever assets that the PA has  
10 in the underlying assets owned by the PIF. And the Court  
11 was cautious, and the Court said, "I am not going to get  
12 into whether a specific asset belongs to the PIF or not.  
13 That will be dealt with elsewhere."

14 But the Court was very clear with respect to the  
15 PIF itself, just like any other judgment of creditor, any  
16 other scofflaw, who by then was over two years  
17 post-judgment, I mean not once volunteered a payment toward  
18 the judgment, just like in any other judgment context, or  
19 post-judgment context, this Court transferred PA's  
20 interests in the PIF.

21 It's no different than if an individual defendant  
22 or judgment debtor owned shares of stock in General Motors.  
23 General Motors need not be a party to the case, General  
24 Motors need not be notified of the case or brought into the  
25 case or impleaded. The debtor owns General Motors stock,

1 this Court has jurisdiction over the debtor and could  
2 easily transfer the interests of that debtor to the  
3 creditors, and that's exactly what the Court did.

4 At the very end of the hearing, Mr. Oswald, who  
5 was here representing one of the PA and PLO's business  
6 partners in Connecticut, an investment firm, Canaan Equity,  
7 and various entities that they invest their funds in, he  
8 came to this Court, and there was a discussion at the end  
9 of the hearing. And at the end of the hearing, I asked the  
10 Court to clarify exactly what Your Honor was ruling because  
11 I knew at that time, a year ago, that Your Honor's words  
12 had been misquoted by various entities in New York,  
13 previously the Palestine Monetary Authority, who came to  
14 this Court a couple of years ago.

15 Your Honor's transcript was taken, given to a  
16 judge and misquoted and manipulated in New York, and I  
17 asked the Court, "Please clarify exactly the relief that's  
18 being granted." And Mr. Oswald tried to clarify on behalf  
19 of his client, who was not a party to the case at that  
20 time, or really not part of the proceedings at that time,  
21 but the Court allowed had him to speak. And,  
22 unfortunately, everything that I predicted came true. The  
23 concerns that we had about the manipulation of this  
24 transcript and the relief requested came true.

25 We, following the creditor's-- following the

1 granting of the creditor's bill and the entering of final  
2 judgment, without opposition by the PA or the PLO, the  
3 Ungars attempted to take control of the Palestine  
4 Investment Fund. As they were doing that for the first  
5 time, the Palestine Investment Fund retained a law firm,  
6 the Leboeuf law firm, threatening to sue the Ungars.

7 The audacity of attempting to sue the Ungars, the  
8 adults, the orphans, their attorney for complying with your  
9 Court's order, for effectuating the terms of that Court  
10 order. But they did. They threatened us, and they  
11 threatened the orphans, and they threatened the entire  
12 family. Why? Because they believed they had a right to  
13 represent this entity, the PIF.

14 They said that Your Honor's ruling was effectively  
15 interrupting their right to their client. They went to  
16 New York, in a proceeding we have against a company called  
17 Orascom-- Orascom is a business partner of the PLO, and  
18 Orascom owes money to the PA and the PLO via the PIF. They  
19 went to the proceeding that we have pending there in  
20 New York, and they asked Federal Judge McMahon to  
21 intervene. The Court rebuffed them and said it was  
22 inappropriate.

23 They then went-- a few weeks later, they went to  
24 Connecticut with respect to a hearing that we have in  
25 Connecticut with the Canaan entities, Mr. Oswald's clients,

1 and again, they attempted to do the same thing. And they  
2 said very clearly, "This Court went too far," quote,  
3 unquote, Thomas Rohback from the Leboeuf firm, that's what  
4 he said.

5 He also said very clearly, and we've quoted it in  
6 full on Page 10 of our brief, he said, quote, "The PIF, if  
7 it were to appear, might consent to personal jurisdiction,  
8 and if the PIF were to intervene in its own name, it might  
9 place itself before the Court."

10 And that was in response to a question of  
11 Judge Dorsey, "Why are you, law firm-- a law firm,  
12 attempting to intervene in a collection proceeding between  
13 two private parties?"

14 And he said, "We can't-- our client can't do this  
15 directly because that is going to place us before the  
16 Court. So what we're going to do"-- and he was very clear,  
17 very explicitly clear. They created an artifice. The  
18 artifice is that this law firm now is somehow at risk in  
19 its business dealings with the PIF.

20 Of course, they had just been hired a couple of  
21 weeks earlier. And, in fact, at the hearing, and the Court  
22 will see, if the Court reviews the transcript, the Court  
23 will see that Mr. Rohback himself couldn't even identify  
24 the names of the individuals who he was allegedly  
25 corresponding with-- or communicating with, rather, because



1 other partners of his had been called, and no one knew  
2 exactly, and it was all in a flux.

3 So what we have here now is, ten months after the  
4 hearing in September, we have no more Ramsey Clark-- he's  
5 off-- he's not involved in this proceeding anymore, but  
6 what we have is another group attempting-- or entity  
7 attempting to disrupt the collection proceedings, and I  
8 would say in a similar fashion to the way this four years  
9 of litiga-- four and a half years of litigation was  
10 attempted to be interrupted and delayed by Mr. Clark.

11 We can't go forward in New York, in part. We  
12 can't go forward in Connecticut, in whole. And sort of by,  
13 in large measure, the parties had discussed with the Judge  
14 a proceeding, so it's partly by agreement, and that is  
15 because this Leboeuf firm now asserts this right that it  
16 has, no different than the PIF's janitor or the copying  
17 service or anyone else who provided a service for the PIF.

18 They claim, because they represent the PIF-- and  
19 as Mr. Rohback told us, the PIF can't come to Court because  
20 they would place themselves in the Court's jurisdiction, they  
21 have effectively hijacked our post-judgment collection  
22 proceedings.

23 And everything that Your Honor did last September  
24 and last summer leading up to the September 13th judgment  
25 has effectively been put on hold as a result of, not even

1 the judgment creditor-- debtors directly, but the law firm  
2 who purports to represent the judgment debtors' wholly  
3 owned, self-created piggy bank called the PIF. And that's  
4 a travesty, and that effects a tremendous injustice to the  
5 Ungars, who've had to search throughout this country and  
6 overseas to satisfy this judgment.

7 They come to this Court, and they would have this  
8 Court believe that this-- Your Honor went too far, quote,  
9 unquote, in its ruling. It would have this Court believe  
10 that they have standing to actually even bring this lawsuit  
11 and to sue the orphans and to sue the family and to sue me  
12 for attempting to comply with Your Honor's ruling of last  
13 September.

14 None of the-- the PIF itself is not in this Court.  
15 It hasn't come to New York, it hasn't come to Connecticut,  
16 the other jurisdictions where the PIF has attempted this  
17 type of ruse. And of course they did that-- and they have  
18 not done that because, as Mr. Rohback explicitly said, they  
19 don't want to do that. That will place them before the  
20 jurisdiction of the Court.

21 The law firm comes in, and the law firm comes in  
22 and says, well, we're going to represent our clients,  
23 although the real clients here are the officers and the  
24 directors of the PIF, and possibly the PIF itself. Where  
25 are they? They're not here. So what they do is they have

1 their law firm come and attempt to disrupt this collection  
2 proceeding.

3 And just as they would be rebuffed in taking this  
4 action-- they would be rebuffed in taking this action to  
5 disrupt this proceeding and disrupt the collection  
6 proceedings because the PIF itself has no standing.  
7 General Motors can't come into Court in a collection  
8 proceeding and say, Judge, I don't want you to transfer the  
9 interests of the judgment debtor, Mr. Smith, to the  
10 collection agency that sued him.

11 They have no standing to determine who owns their  
12 shares. This is a matter between two parties. And now we  
13 don't even have the third-party piggy bank. We have the  
14 fourth-party service provider, a law firm hired only after,  
15 a month after Your Honor gave this final judgment in the  
16 creditor's bill. Only now do they come forward and are  
17 they attempting to sort of hijack and disrupt this  
18 litigation, and that's wrong and should not be sanctioned.

19 Now, the underlying merits of this case, the  
20 issue, if you will, of the merits, not necessarily in this  
21 case, but the merits of the-- with respect to the issue of  
22 the nature of the PIF and the Ungars' successful takeover,  
23 if you will, of the PIF post the September final judgment  
24 is going to be the subject of another proceeding that's  
25 already on hold by agreement of the parties, and that is in

1 the context of the original litigation.

2 In that original litigation, post-judgment, we  
3 served a subpoena on the Canaan entities. There is a  
4 confidentiality agreement in that case that was executed  
5 approximately two years ago.

6 In the context of the Ungars filing a motion to  
7 modify that confidentiality agreement, because they need to  
8 release some of those documents, they need to get out of  
9 that confidentiality agreement, in part, in order to  
10 effectuate the terms of the final judgment with respect to  
11 the creditor's bill, they filed a motion in this Court.  
12 This Court will have to determine some of those underlying  
13 issues with respect to the control of the PIF.

14 That's not going to be determined and can't be  
15 determined in this case. This Court has no standing,  
16 there's no jurisdiction, as we've said very clearly,  
17 there's no diversity between the parties. To now raise in  
18 their reply that it wasn't clear what Judge Martin ruled,  
19 whether Yaron Ungar had been a domiciliary of the United  
20 States, is grasping at straws.

21 I was at that hearing when Judge Martin, on his  
22 own, asked Yaron Ungar's father, "When was the last time he  
23 was in the United States?" And he said, "12 years-- 12 or  
24 14"-- I think it was 12 years-- "earlier," hadn't lived  
25 here. Your Honor so ruled, and Your Honor adopted in full

1 Judge Martin's rulings with respect to that very same  
2 issue.

3 Now you'd have the law firm-- or they would have  
4 the law firm attempt to do discovery against the victims in  
5 this case as to whether Mr. Ungar attempted or had an  
6 interest in moving back to the United States after not  
7 living here for 12 years? It's an absurdity. It ends up  
8 making a mockery of this proceeding and the last seven  
9 years of litigation here.

10 In response to our motion to dismiss, for the  
11 first time, other than basically a single sentence in their  
12 complaint, they allege that they need this suit brought  
13 because there is an allegation by one of the Ungars'  
14 New York attorneys that they may be liable under RICO for  
15 interfering with the collection proceedings.

16 Clearly, the argument raised in their response to  
17 our motion to dismiss was-- brought a whole cloth and  
18 invented, in response to our motion, not with respect to  
19 the complaint itself because the complaint itself mentions  
20 the word RICO once, never says that the underlying  
21 predicate acts for RICO are not exigent, asking for a  
22 declaratory relief with respect to this alleged RICO claim,  
23 and as their own affidavit of Mr.-- Dr. Mustafa indicates,  
24 the genesis of the proceedings and the machinations that  
25 they set in motion are really with Dr. Mustafa.

1           Because their complaint itself does not lay out a  
2           proper RICO claim, it must be denied as being defective.  
3           Having read Dr. Mustafa's affidavit, we learned that the  
4           law firm is not entirely the leader of this ruse and this  
5           excursion, but it's the PIF and the former directors who  
6           are now pushing to hide behind-- pushing this litigation,  
7           hiding behind the shield of their law firm.

8           This case cries out for this Court to write a  
9           decision dealing with the underlying issues in this case so  
10          that we don't have to come back here two years again and  
11          ask this Court to do the very same thing. And it's  
12          unfortunate that we're here. The Court was very clear  
13          about what it was ordering and how it was handling and/or  
14          not handling certain post-judgment proceedings in this  
15          case. And it's unfortunate, but we keep coming back here  
16          because of the subterfuge, the ruse, the shields, the sort  
17          of offensive defense that has been created by the PA,  
18          through its investment arm, the PIF.

19          So I would urge the Court to issue an order with  
20          respect to these underlying issues so, once and for all,  
21          the courts in Connecticut can allow us to proceed to deal  
22          with the assets that are there that are quite substantial,  
23          as well as the assets in New York, and that would-- by  
24          allowing us to proceed there and resolving these issues,  
25          we probably would not need to return back to this Court

1 again.

2 THE COURT: I thought you wanted me to dismiss  
3 this case.

4 MR. STRACHMAN: We want you to dismiss this case,  
5 but I would like you to dismiss it with an order, please,  
6 describing the facts and circumstances, so that there can  
7 be no misunderstanding again, as we predicted last year, as  
8 to what exactly this Court has done and is doing, has done  
9 in the past, last September, and is doing now with respect  
10 to these underlying issues.

11 Thank you.

12 THE COURT: All right. Mr. Medeiros?

13 MR. MEDEIROS: Thank you, Your Honor.

14 May it please the Court, the sole matter for  
15 discussion and resolution on this motion today is whether  
16 this Court has jurisdiction to entertain this suit. And I  
17 will attempt to confine my remarks to the issues pertinent  
18 to that motion.

19 I do agree with Mr. Strachman on one thing, that,  
20 for the reasons I will get to in my argument, but not the  
21 reasons that Mr. Strachman thinks, this case does cry out  
22 for a written decision, if Your Honor has the time, because  
23 it raises serious issues of the impropriorities in  
24 obtaining the creditor's bill, as I will outline in a  
25 moment, that underlies one of our grounds for jurisdiction

1 in this case.

2 The issue at the heart of this controversy, the  
3 issue of whether Leboeuf-Lamb has the right to represent  
4 the PIF, is before three different Federal judges. That  
5 issue is going to be resolved by some judge some place.

6 Judges Dorsey down in Connecticut and McMahon down  
7 in the Southern District of New York have deferred to  
8 Your Honor to have the opportunity to resolve that issue  
9 first by taking a fresh look at the validity of the  
10 assignment of the PIF to the Ungars in the final judgment  
11 entered by this Court on September 19, 2006.

12 Neither of those Judges has rebuffed Leboeuf's  
13 arguments. Your Honor can see in the exhibits that we  
14 submitted the marginal notations the Judges placed on their  
15 orders deferring decision, not rebuffing our arguments.

16 We believe that Your Honor has subject matter  
17 jurisdiction here, as I'll discuss in a moment, but if  
18 Your Honor were to decide otherwise, this controversy will  
19 not disappear, it simply will get resolved in a different  
20 place, in a different forum.

21 THE COURT: Maybe that's what should happen.

22 MR. MEDEIROS: That's up to Your Honor,  
23 Your Honor.

24 THE COURT: Well, I have a big problem with your  
25 standing to bring this suit.



1 MR. MEDEIROS: I'm going to get to that,  
2 Your Honor, if I may.

3 THE COURT: You'd better get to it because that's  
4 the key issue. I don't see that Leboeuf has any standing  
5 to bring these two causes of actions that are contained in  
6 the complaint.

7 MR. MEDEIROS: There are, we believe, Your Honor,  
8 four, actually, independent bases for jurisdiction over  
9 this declaratory judgment action.

10 First is the threatened RICO claim against  
11 Leboeuf-Lamb, not against the PIF, against Leboeuf-Lamb  
12 directly.

13 THE COURT: That's a red herring.

14 MR. MEDEIROS: I will try to explain why that-- I  
15 disagree with that, respectfully, Your Honor, in a moment.

16 The second basis for jurisdiction is our request  
17 to vacate or modify the final judgment for reasons, again,  
18 that I will get to.

19 THE COURT: You have no standing.

20 MR. MEDEIROS: I believe we do, Your Honor, as  
21 I'll try to explain.

22 THE COURT: Well, you'd better get to it real fast  
23 because it's not going to take me long to dispose of this  
24 case.

25 MR. MEDEIROS: Your Honor, the third ground is our

1 Federal Constitutional claim. And the fourth is diversity.

2 Any single one of those grounds, Your Honor, is  
3 sufficient to defeat Defendants' motion to dismiss. The  
4 first three are ripe for a decision today. The fourth is  
5 not. And only if the Court rejects all of the first three  
6 grounds, we assert, would jurisdictional discovery be  
7 necessary in order to be able to resolve the diversity  
8 ground. And even there, discovery would be unnecessary if  
9 the Court agrees with our position that Yaron Ungar and  
10 Amichai Ungar can be dropped as dispensible parties,  
11 thereby preserving diversity.

12 So let me get to the first ground, if I may,  
13 Federal question jurisdiction. Some eight months-- and,  
14 why, to answer Your Honor's question, hopefully answer  
15 Your Honor's question, that is not a red herring.

16 Some eight months ago, on October 24th, 2006, one  
17 of the Ungars' counsel, Mr. Tolchin, sent Mr. Rohback of  
18 Leboeuf the letter threatening legal action against  
19 Leboeuf, against the law firm itself, under RICO and  
20 otherwise.

21 The threat made in that letter was explicit and  
22 unconditional, quote, "We hereby caution you in the  
23 strongest terms that, if you or Leboeuf takes any further  
24 action purporting to act on behalf of the PIF, including,  
25 without limitation, filing any court papers purporting to

1 be from the PIF, the Ungars and the PIF will take all  
2 measures the law permits against you and your firm.  
3 Interference with enforcement of a judgment is actionable,  
4 both under State law and under RICO," citing cases.

5 "I remind you that the underlying judgment here  
6 exceeds \$116 million, which, trebled under RICO, comes to  
7 some \$350 million. Leboeuf would not be the first law firm  
8 to be misled and then left in the lurch by the Palestinian  
9 Authority and the PLO," close quote.

10 And as if to underscore the seriousness of that  
11 threat against Leboeuf, Mr. Tolchin concluded his letter  
12 with the accusation that, quote, "Finally, Leboeuf's  
13 threats against the Ungars are shocking, unconscionable and  
14 unethical," close quote.

15 After Leboeuf found itself-- after receiving that  
16 letter and Leboeuf found itself in the untenable position  
17 of being threatened with a \$350 million damage claim if it  
18 carried out its professional obligations to the client that  
19 had retained it, the PIF, we brought this suit just three  
20 weeks later, November 16, 2006.

21 The Defendants asked for, and we assented to, a  
22 substantial extension of time for them to respond to the  
23 complaint. And, finally, some four months later, on  
24 March 20, 2007, Defendants filed their motion to dismiss  
25 and supporting materials. That submission contained no

1 retraction of the RICO threat letter.

2 If anything, the Ungars' position became even more  
3 entrenched, accusing Leboeuf in those filings, of, quote,  
4 "abusing the process of the Federal Courts by filing  
5 baseless proceedings, such as the instant action." That's  
6 Mr. Strachman's memorandum at Page 19.

7 We filed our opposition papers on May 9, 2007.  
8 There was still no retraction by the other side of the  
9 threat letter.

10 Finally, on June 12, 2007, as part of its final  
11 day reply papers in support of its dismissal motion, it  
12 produced another letter from Mr. Tolchin to Leboeuf. The  
13 new letter says, in effect, never mind. We didn't really  
14 mean what we've been saying the past eight months. We're  
15 not going to sue you. So forget everything we said about  
16 you. We're retracting this-- we're retracting all of those  
17 statements we made in that threat letter, and we want this  
18 suit to go away as moot.

19 And as authority for their mootness argument, they  
20 now cite-- the Ungars rely upon Judge Nelson's decision  
21 from the District Court of Massachusetts in a case called  
22 Hudson Valley News, which we had actually brought to  
23 Your Honor's attention in our opening memo in opposition to  
24 the motion to dismiss.

25 That case does not support our adversary's

1 position as to mootness. Unlike in that case, Federal  
2 question jurisdiction, by reason of the RICO threat letter,  
3 existed here as of the day we filed suit, and it continued  
4 to exist at least right up to the Defendants' last-second  
5 change of position on June 12.

6 In Hudson Valley News, by contrast, the Court held  
7 that, because the initial communication, the initial threat  
8 letter had simply said that the seller was, quote, "merely  
9 considering," close quote, filing suit, the potential of  
10 such a suit was, in the Court's words, quote, "attenuated  
11 to the point of being hypothetical," close quote.

12 The Court ruled that quite a different outcome  
13 would apply if the declaratory judgment Plaintiff had,  
14 quote, "a reasonable apprehension," close quote, of being  
15 sued, such that the threat of suit was, quote, "likely to  
16 chill the declaratory judgment Plaintiff's activities,"  
17 close quote.

18 That is this case. That distinction fits this  
19 case to a tee.

20 The Hudson Valley News case does not authorize a  
21 party's, such as the Defendants here, manipulation of the  
22 Court's existing jurisdiction when that party suddenly  
23 decides, for whatever reason, that it wants to deprive the  
24 Court of ruling on the issues presented.

25 Leboeuf, of course, since the new letter arrived

1 on June 12, takes solace in Mr. Tolchin's seemingly  
2 air-tight retraction letter. But given the entire history  
3 of this controversy, it is not inconceivable that the  
4 retraction letter potentially could give rise to a host of  
5 enforceability issues that could consume significant time  
6 and resources of the Court and the parties to work through.

7 Rather than starting down that road, Your Honor,  
8 the Court should simply ignore the suspicious, last-minute  
9 attempt to deprive the Court of Federal question  
10 jurisdiction and proceed to the merits.

11 Our second ground for subject matter jurisdiction  
12 here is--

13 THE COURT: That hasn't been asserted as a cause  
14 of action in this case. There are only two causes of  
15 action asserted in this case: One of them is that the  
16 District Court could not properly convey ownership in the  
17 PIF. And the second one is that the Ungars' purported  
18 takeover of the PIF was ineffective under applicable  
19 corporate law and under the Articles of Association of the  
20 PIF.

21 Those are the two causes of action that you've  
22 asserted in this case, and you don't have standing to  
23 assert either.

24 MR. MEDEIROS: Your Honor, respectfully, we  
25 specifically cite in the complaint Federal question

1 jurisdiction, and we cite 13--

2 THE COURT: It's not a question of Federal  
3 question jurisdiction. It's a question of standing. You  
4 don't have standing to bring this case.

5 MR. MEDEIROS: Your Honor, Leboeuf was the object  
6 of the threat letter.

7 THE COURT: I don't care about the threat letter.  
8 As I said, that's-- that's a red herring. That's not  
9 before this Court. This Court had jurisdiction over the PA  
10 throughout this litigation, despite what the PA was doing,  
11 and entered judgment against the PA.

12 And this Court had jurisdiction over the  
13 creditor's bill, had jurisdiction over the PA, had  
14 jurisdiction to issue that order transferring whatever  
15 interests the PA had to the Ungar Plaintiffs.

16 And you don't have standing to contest that.

17 MR. MEDEIROS: Let me continue to try to persuade  
18 Your Honor not only that we have standing, but that the  
19 creditor's bill was simply unauthorized and void under  
20 Rhode Island law.

21 THE COURT: It's not a question of Rhode Island  
22 law. It's a question of who has standing to raise that  
23 issue, and the PA and the PLO did not. They defaulted, as  
24 they defaulted throughout this-- these proceedings. You  
25 don't have standing to take their place.

1 MR. MEDEIROS: I'm not seeking to take their place  
2 at all, Your Honor.

3 THE COURT: That's the only way you can be heard.

4 MR. MEDEIROS: I don't represent the PA.

5 THE COURT: That's right.

6 MR. MEDEIROS: I don't represent the PLO. I've  
7 brought a brand new lawsuit on behalf of an entity,  
8 Leboeuf, that absolutely is harmed by not only the RICO  
9 letter, but by the creditor's bill that was improperly  
10 entered in the underlying case, and that's our standing,  
11 Judge.

12 THE COURT: You don't have that standing, and I'm  
13 going to so rule today. I'm going to throw you out of  
14 Court. This case right now looks to me to be frivolous,  
15 and I might consider sanctions.

16 MR. MEDEIROS: I need to proceed with my argument  
17 and hopefully persuade Your Honor to the contrary.

18 THE COURT: Go ahead.

19 MR. MEDEIROS: The second basis for this Court's  
20 subject matter jurisdiction is that-- the well-established  
21 principle that a Federal Court has jurisdiction in the same  
22 case, or in a subsequent case, such as this one, to correct  
23 its own errors. The Defendants' reply memo in support of  
24 their motion to dismiss provides all the foundation needed  
25 for such jurisdiction.



1 I'd like to quote from Page 12, where the  
2 Defendants argue, quote, "As a matter of law, the PIF had  
3 no right or standing whatsoever to participate in the  
4 creditor's bill proceeding. That proceeding, and the  
5 judgment entered thereon, affected only the rights and  
6 assets of the PA, not the PIF, and therefore, the only  
7 party that had standing to oppose the creditor's bill, or  
8 to appeal the judgment, was the PA itself. But the PA  
9 intentionally defaulted the creditor's bill and failed to  
10 appeal the judgment thereon," close quote.

11 THE COURT: That's absolutely accurate.

12 MR. MEDEIROS: It is not, Your Honor, and I'd like  
13 to explain--

14 THE COURT: Yes, it is.

15 MR. MEDEIROS: -- I'd like to explain why.

16 In fact, it is now apparent, Your Honor, that the  
17 Court was unquestionably led into several serious legal  
18 errors in the creditor's bill procedure that the Ungars  
19 presented to it, and it's framed exactly by the quote that  
20 I just read from Mr. Strachman's memorandum.

21 We submit in this case that those errors are so  
22 fundamental, that they obligate Your Honor to vacate the  
23 judgment assigning the PIF to the Ungars, which, after all,  
24 is the basis on which the other side purports to claim that  
25 Leboeuf does not have any standing because it is not

1 counsel to the PIF.

2 THE COURT: You have no standing to make that  
3 argument. You have no standing to bring that proceeding.  
4 The Court had jurisdiction over the PA and jurisdiction  
5 over this matter, and the Court's judgment is entitled to  
6 full faith and credit in every other court in this land.

7 MR. MEDEIROS: Let me try to explain why not,  
8 Your Honor.

9 The analysis begins with Rule 69 of the Federal  
10 Rules of Civil Procedure. Rule 69 says, quote, "The  
11 procedure on execution, in proceedings supplementary to and  
12 in aid of a judgment, and in proceedings on and in aid of  
13 execution, shall be in accordance with the practice and  
14 procedure of the state in which the District Court is held  
15 existing at the time the remedy is sought," close quote.

16 That wasn't done here. The Ungars proceeded  
17 before Your Honor under Rhode Island General Laws,  
18 Section 9-28-1, which expressly requires, as a statutory  
19 prerequisite to filing a creditor's bill, that an execution  
20 first be returned unsatisfied.

21 The Ungars have to concede that they did not seek  
22 an execution at all against the PA. That will not be  
23 contested. They didn't even try. In Footnote 2--

24 THE COURT: That's because there are no assets in  
25 this State.

1 MR. MEDEIROS: It makes no difference, Your Honor,  
2 as I'll explain.

3 THE COURT: Yes, it does make a difference.

4 MR. MEDEIROS: The Rhode Island Supreme Court has  
5 already held, Your Honor, expressly it doesn't make a  
6 difference.

7 THE COURT: You have no right to make that  
8 argument. The PA didn't make that argument. You have no  
9 right to make it. You have no standing. Can't you get  
10 that through, through your head? You have no standing.

11 MR. MEDEIROS: Your Honor's order, final judgment,  
12 gave, in words, the entire rights of the PA and the PIF to  
13 the Ungars.

14 THE COURT: That's correct. That was the judgment  
15 of the Court. I have jurisdiction to do it, and I did it,  
16 and that judgment is entitled to full faith and credit  
17 everywhere in this country. And you have no standing to  
18 contest it.

19 MR. MEDEIROS: It is that final judgment,  
20 Your Honor, that aggrieved the PIF and also aggrieves  
21 Leboeuf and gives them standing to bring this case, and let  
22 me try to explain why.

23 In Footnote 2, on Page 4 of their creditor's bill,  
24 the Ungars sought to excuse issuing an execution, calling  
25 it, quote, "a frivolous waste of resources," close quote.

1 But they did not cite to the Court, as they were  
2 obligated to, particularly in a circumstance where their  
3 adversary-- their then adversary was mute, a controlling  
4 precedent from the Rhode Island Supreme Court that  
5 expressly rejected the identical contention in another case  
6 30 years ago that is still good law today, as I'll discuss  
7 in a moment.

8 Then, in a letter to Your Honor dated September 1,  
9 2006, which is ECF Document No. 378, in response to a  
10 submission by the Canaan funds, Mr. Strachman acknowledged  
11 that he had failed to execute-- failed to issue an  
12 execution at all, citing U.S. vs. Russell, 241 F.2d, 879,  
13 at 881-82, First Circuit 1957, for the proposition that the  
14 Ungars were excused from complying with the Rhode Island  
15 Statutory prerequisite of an execution being returned  
16 unsatisfied.

17 The Russell case is no authority whatsoever for  
18 that proposition. Russell didn't involve the Rhode Island  
19 Creditor's Bill Statute at all, which isn't even mentioned  
20 in the opinion. It was a suit to enforce an IRS tax lien  
21 alleging a fraudulent transfer by a parent to a daughter in  
22 which the daughter simply argued exhaustion of remedies,  
23 that the IRS was required to go against the parent first  
24 and exhaust remedies against the parent before they could  
25 proceed against the child transferee. There was no

1 statutory prerequisite in the IRS Statute like there is  
2 here in the Rhode Island Creditor's Bill Statute for an  
3 unsatisfied execution being returned.

4 The fact that Russell has no bearing whatsoever on  
5 this issue was made crystal clear by the Rhode Island  
6 Supreme Court in a decision 20 years after Russell,  
7 Plantations Industrial Supply vs. O'Brien, 379 A.2d 365, a  
8 1977 case, was a supplementary proceeding under the  
9 Rhode Island Creditor's Bill Statute. Your Honor doubtless  
10 remembers the inimitable Aram Berberian, whose actions gave  
11 rise to the decision in that case.

12 Mr. Berberian, on behalf of the judgment creditor,  
13 argued that an unsatisfied execution was not a prerequisite  
14 where an examination of municipal and state records showed  
15 that the debtor owned no real property here, no motor  
16 vehicles here, where the creditor didn't know of any other  
17 assets owned by the debtor, and therefore, the creditor  
18 would not be able to identify for the sheriff any assets to  
19 be levied upon, and therefore, an execution would be  
20 futile.

21 The Supreme Court squarely rejected that futility  
22 argument. The Court said, quote, "This Court has  
23 repeatedly stressed that legislative enactments relating to  
24 the service of process are to be followed and construed  
25 strictly," close quote. That's 379 A.2d at 367.

1           The Supreme Court held that an execution returned  
2           unsatisfied was an absolute prerequisite to the judgment  
3           creditor proceeding further. That's actually not a very  
4           surprising result, I submit, because Chapter 28 of Title IX  
5           is even entitled, "Proceedings in Aid of Execution."

6           The holding in Plantations Industrial Supply has  
7           never been questioned and remains the law of Rhode Island  
8           and was binding on this Court and is binding on this Court  
9           under Rule 69.

10          THE COURT: That's an excellent argument that the  
11          PA should have made. But the PA defaulted, as they have  
12          defaulted throughout. And so the judgment that this Court  
13          entered is a valid judgment, and the Court had jurisdiction  
14          over the PA.

15          They defaulted, and the judgment was entered, and  
16          that judgment's entitled to full faith and credit  
17          throughout the United States.

18          And you have no standing to make that argument.

19          MR. MEDEIROS: Your Honor, I'm not here today  
20          carrying any water for either the PA or the PLO.

21          THE COURT: You have no standing. Leboeuf has no  
22          standing to raise this question.

23          MR. MEDEIROS: I've done the best I can so far to  
24          explain why I think we do, but if I may continue with my  
25          argument, Your Honor.

1 THE COURT: Go ahead, you can put it on the  
2 record, but you're going to have to make it in Boston.

3 MR. MEDEIROS: I understand, Judge, and we're  
4 prepared to do that if we have to.

5 Just last week, Your Honor, on June 11, the  
6 Rhode Island Supreme Court decided another creditor's bill  
7 case named Trainor vs. Grieder, No. 2006-140-A, which can  
8 be found at 2007 Westlaw, 1662063, in which it reaffirmed  
9 that, quote, "A judgment creditor, aggrieved by an  
10 unsatisfied execution, has two options to compel payment  
11 from the debtor under Chapter 28." I'm going to discuss  
12 those two options in a moment because that's the next part  
13 of my argument.

14 But the prerequisite of an unsatisfied execution  
15 remains the law in Rhode Island. That's one of three  
16 reasons why the creditor's bill here, as presented to you  
17 by the other side, was statutorily defective and void under  
18 Rule 69.

19 A second reason is that the Plaintiffs proceeded  
20 under the wrong section of the Creditor's Bill Statute, a  
21 section that does not authorize either the procedure they  
22 invoked, nor the relief they applied for and obtained.

23 Title IX, Chapter 28, Your Honor, has two distinct  
24 avenues that a creditor can pursue in seeking to collect on  
25 a judgment, and parenthetically, return of an execution

1 unsatisfied is an express prerequisite in both sections.  
2 9-28-1 authorizes a creditor to institute a new civil  
3 action to reach and apply assets in which the debtor has an  
4 interest.

5 9-28-3 authorizes a creditor to apply for a  
6 citation to the debtor in the existing action, to show  
7 cause why the debtor should not be required to make  
8 installment payments on the judgment.

9 Here, the Plaintiffs proceeded solely under  
10 9-28-1. Their application, which is ECF Document 370, was  
11 entitled, quote, "Plaintiff's Creditor's Bill Pursuant to  
12 RIGL 9-28-1," close quote.

13 The Ungars' brief in this action, in support of  
14 their motion to dismiss, this declaratory judgment suit,  
15 confirms that they had proceeded solely under 9-28-1.

16 And in a letter to the Court dated August 1, 2006,  
17 which is ECF Document 375, entitled, quote, "Urgent Request  
18 for Entry of Default on Plaintiff's Creditor's Bill," close  
19 quote, Mr. Strachman stated, quote, "Under 9-28-1, a  
20 creditor's bill is a civil action, and since the Defendants  
21 have not answered or opposed Plaintiff's creditor's bill,  
22 entry of default thereon is now in order," close quote.

23 But Plaintiffs did not bring a new civil action,  
24 as required by 9-28-1. Instead, they borrowed partly from  
25 9-28-1, partly from 9-28-3, and jumbled it all together.



1           The Rhode Island Supreme Court has expressly held  
2           that the two sections cannot be conflated and distorted  
3           that way. And that Court, the Rhode Island Supreme Court,  
4           has invalidated an order that resulted from similarly  
5           defective application by a judgment creditor. The case is  
6           Rhode Island Hospital vs. Collins, 368 A.2d, 1225, in 1977,  
7           where the Hospital obtained a judgment against Collins. It  
8           then issued a writ of execution that was returned  
9           unsatisfied.

10           The Hospital then proceeded under 9-28-3 in that  
11           instance in the same proceeding and conducted a hearing  
12           into the Collins' ability to pay the debt. It turned out,  
13           in the meantime, that Collins had, a few weeks earlier,  
14           conveyed title to his home to a corporation of which he was  
15           the sole shareholder.

16           At the conclusion of the 9-28-3 hearing, the  
17           court-- the trial court ordered Collins to convey his stock  
18           certificate in that corporation to the Hospital. On  
19           appeal, the Rhode Island Supreme Court vacated that order.

20           The Court held in pertinent part, quote,  
21           "Chapter 28 of Title IX affords a judgment creditor with  
22           two remedies when an execution is returned unsatisfied.  
23           Section 9-28-1 specifically provides that a judgment  
24           creditor may institute a civil action to reach and apply  
25           assets. On the other hand, Sections 9-28-3 through 9-28-7

1 permit a creditor to apply to the Court for a citation,  
2 which directs the debtor to appear in Court and show cause  
3 why an inquiry cannot be made into his ability to satisfy  
4 the judgment," close quote.

5 The Court, in that case, invalidated the  
6 Hospital's attempt to short-circuit the reach-and-apply  
7 alternative. And in the key passage for today's purposes  
8 from the Rhode Island Supreme Court's opinion, the Court  
9 held that, quote, "If the Hospital wishes to go the route  
10 delineated in 9-28-1 and bring an independent civil action  
11 to reach and apply Collins' interests in the corporation,  
12 it may do so. But the order now under review finds no  
13 support whatever in the law," close quote. That's 368 A.2d  
14 at 1227.

15 Likewise, Plaintiff's distortion before Your Honor  
16 of 9-28-1 in this case finds no support whatever in the  
17 law.

18 And, again, in its decision last week in the  
19 Trainor vs. Grieder decision, the Rhode Island Supreme  
20 Court twice reaffirmed that 9-28-1 requires a judgment  
21 creditor to institute a civil action.

22 The Ungars did no such thing here. Their failure  
23 to follow the Statute they themselves invoked, 9-28-1, is  
24 inexcusable, particularly where they knew that, whatever  
25 they presented to the Court, no opposition would be filed

1 by the PA. And, therefore, they were placing entirely on  
2 the Court the burden to independently identify and research  
3 the Statutory flaws in what they were asking for.

4 THE COURT: The PA defaulted. The PA defaulted.  
5 They've been defaulting throughout this trial, throughout  
6 the whole proceedings, they defaulted. Yasser Arafat  
7 refused to recognize the jurisdiction of any United States  
8 Courts and refused to respond to this case on the merits.

9 After the Court decided that there was  
10 jurisdiction over the PA and the PLO, then they tried  
11 diplomatic immunity. That failed. Then they tried  
12 sovereign immunity. That failed. And then they refused to  
13 participate further in this case.

14 The Court entered judgment for \$116 million-plus,  
15 and the Court has entered a judgment transferring the  
16 assets, the intangible assets, the ownership assets of the  
17 PA to the Ungar Plaintiffs. And the Court has jurisdiction  
18 to do that, and you cannot assail it.

19 MR. MEDEIROS: Let me make another stab at it,  
20 Judge.

21 The reason why--

22 THE COURT: You're making all the arguments that  
23 the PA should have made.

24 MR. MEDEIROS: Not at all, Your Honor.

25 THE COURT: Yes, you are.

1 MR. MEDEIROS: The interests that I am arguing  
2 for, Your Honor, are interests of Leboeuf-Lamb--

3 THE COURT: They have no interests.

4 MR. MEDEIROS: -- to represent its clients, who  
5 were deprived of their rights by a creditor's bill that was  
6 fatally flawed. That's essentially the heart of my  
7 argument, Judge, and that's why they have standing.

8 THE COURT: They have no standing. They have no  
9 standing to contest the judgment that this Court entered.

10 MR. MEDEIROS: Judge, the reason why the second  
11 flaw--

12 THE COURT: The PIF has no standing either because  
13 the Court had jurisdiction over the PA, and the Court has  
14 the power and authority and the jurisdiction to enter that  
15 judgment on the creditor's bill.

16 MR. MEDEIROS: Judge, Rule 69 tells the Court  
17 that, in proceedings in aid of execution, the Court has to  
18 follow Rhode Island State law. That was not done here in  
19 several significant respects, not--

20 THE COURT: The PA did not make that argument.  
21 They defaulted.

22 MR. MEDEIROS: Leboeuf is here to make that  
23 argument because it is--

24 THE COURT: And you can't.

25 MR. MEDEIROS: -- because it is entitled to,

1 Judge--

2 THE COURT: No, you can't.

3 MR. MEDEIROS: -- as the lawyer for the entity who  
4 was deprived of its rights by a creditor's bill that  
5 shouldn't have been entered, that was flawed. And the  
6 reason--

7 THE COURT: You have no standing. You have no  
8 standing. Leboeuf has no standing in this proceeding. And  
9 I'm going to make that absolutely clear. And you can  
10 appeal to the Court of Appeals if you want one more time.

11 MR. MEDEIROS: Judge, if they had done it the  
12 right way, the way they had to do it to comply with  
13 Rhode Island law, under 9-28-1--

14 THE COURT: You have no standing to raise that  
15 issue.

16 MR. MEDEIROS: -- they would have had--

17 THE COURT: The judgment of this Court stands  
18 because the Court has jurisdiction to enter it, and it  
19 affects the PA, who defaulted, and you have to accept that  
20 judgment. And every other Court in the United States has  
21 to accept that judgment, must give it full faith and  
22 credit.

23 MR. MEDEIROS: We respectfully disagree with that,  
24 Your Honor.

25 THE COURT: All right. You can disagree all you

1 want, but that's my judgment.

2 MR. MEDEIROS: If I may proceed to finish, for the  
3 record, my argument, I'd appreciate it.

4 THE COURT: Go ahead.

5 MR. MEDEIROS: The reason why this second grievous  
6 noncompliance with the Rhode Island Statute is important--  
7 it's not a mere technicality-- if Plaintiffs-- if the  
8 Ungars had complied, as they were required to, with 9-28-1,  
9 instituting a new reach-and-apply statute, they would have  
10 been obligated to name the PIF as a Defendant in that  
11 action.

12 THE COURT: They do not. They did not have the  
13 requirement of naming the PIF. The PIF had no interest,  
14 had no interest in that proceeding.

15 MR. MEDEIROS: It absolutely did, Your Honor.

16 THE COURT: No, it did not.

17 MR. MEDEIROS: It was the entity whose assets the  
18 Ungars--

19 THE COURT: No.

20 MR. MEDEIROS: -- are trying to get their hands on  
21 to satisfy their judgment.

22 THE COURT: No, no, no. What the Ungars were  
23 trying to get hold of was the assets, the ownership  
24 interests of the PA, and the PA defaulted. The PIF was not  
25 an indispensable party or even a required party to that

1 creditor's bill.

2 MR. MEDEIROS: If I may have a moment, I'd like to  
3 read you something from one of Mr. Strachman's briefs. He  
4 doesn't agree with what Your Honor just said.

5 THE COURT: Well, that's his problem. What I say  
6 is the law of this case. The PIF has no standing to assail  
7 this judgment.

8 MR. MEDEIROS: The reason why the PIF's interests  
9 were directly implicated, and in addition to any interests  
10 the PA and the PLO had, is now virtually conceded by  
11 Mr. Strachman in his memorandum in support of his motion to  
12 dismiss, at Page 4, where he says specifically, "The  
13 creditor's bill sought a judgment assigning to the Ungars  
14 two distinct categories of rights belonging to the PA, the  
15 second of which"-- I will jump over the first-- "the second  
16 of which is the PA's rights in property, assets and credits  
17 titled and/or owed in the names of the PCSC and the PIF."

18 He's admitting that he was seeking assets owned by  
19 the PIF by reason of that creditor's bill.

20 THE COURT: What does the judgment read? What  
21 does the judgment read? What judgment did I enter?

22 MR. MEDEIROS: You followed exactly what he asked  
23 you to do, Your Honor. In the second paragraph of your  
24 final judgment, you ordered that all rights, benefits and  
25 interests of the Palestinian Authority in all property,

1 assets and credits of any type that are titled to and/or  
2 owed to the Palestinian Commercial Services Company and/or  
3 to the Palestinian Investment Company would transfer to the  
4 Plaintiffs."

5 Your Honor conveyed the assets of the PIF, even  
6 though it was never before the Court, it was entitled to be  
7 before the Court, it never had an opportunity to be heard,  
8 and its interests were entirely distinct from either the PA  
9 or the PLO.

10 THE COURT: Then the PIF should assert those  
11 rights. Leboeuf doesn't have the right to assert those  
12 rights.

13 MR. MEDEIROS: We found just one reported decision  
14 in Rhode Island bearing on the issue of whether, if the  
15 Ungars had done it as statutorily authorized, they would  
16 have been required to name the PIF.

17 The case is Berard vs. Blais, 186 A.475, at 476,  
18 Rhode Island, 19-- Rhode Island Supreme Court, 1936, where  
19 the Court seemed to accept that, as a given, without even  
20 needing discussion, that the third party whose assets are  
21 sought to satisfy a judgment against the debtor, like the  
22 PIF's assets here, must be named as a Defendant in a  
23 reach-and-apply suit under 9-28-1.

24 What we did find, Your Honor, are numerous cases  
25 under reach-and-apply statutes in Massachusetts and



1 throughout the country that so hold explicitly, and just  
2 for one example, out of the Bankruptcy Court in  
3 Massachusetts, a case called In Re: Fraden, F-r-a-d-e-n,  
4 317 Bankruptcy Reporter 24, at Page 38, 2004.

5 And Am. Jur. and CJS compile the voluminous  
6 authorities, without overstating it, that make it pretty  
7 apparent that PIF would have had to have been named as a  
8 party, if they could even get jurisdiction over the PIF  
9 here, if they had done it the right way under the  
10 Rhode Island Statute.

11 THE COURT: No jurisdiction over PIF in this  
12 Court, but I had jurisdiction over the PA.

13 MR. MEDEIROS: I understand that.

14 THE COURT: And that's all that was necessary.

15 MR. MEDEIROS: If the Ungars had complied with  
16 9-28-1, they would have faced the impossibility of  
17 obtaining personal jurisdiction over the PIF here in  
18 Rhode Island, so their solution was to just ignore the  
19 requirement.

20 In short, Your Honor, the Ungars cut every corner.  
21 The Ungars did nothing by the book with respect to the  
22 creditor's bill. They did not provide Your Honor with the  
23 controlling precedents that were directly against them, as  
24 they had an obligation to do. The Court was sold a bill of  
25 goods.

1           If given the opportunity, the Rhode Island Supreme  
2 Court unquestionably would declare the creditor's bill and  
3 the judgment that followed in this case flawed.

4           For all these reasons, the creditor's bill that  
5 was the foundation for the final judgment entered  
6 September 19, 2006, was fatally defective and a nullity  
7 from its inception. And, accordingly, the portion of the  
8 final judgment that assigned to the Ungars ownership of the  
9 PIF, which is the portion they're purporting to rely upon  
10 to deprive Leboeuf of representing the PIF, which is what  
11 this lawsuit is all about, is not entitled to enforcement  
12 by any of the Courts that have this matter under  
13 consideration, Your Honor or either of the other two  
14 Federal judges.

15           In the interest of time, I'm simply going to  
16 summarize a final few points in response to the Ungars'  
17 reply memo and rely upon our written submissions for the  
18 rest of our argument.

19           First, as to the value of the PIF's assets, in  
20 comparison to the amount of the Ungars' judgment, with  
21 respect to our argument that the Court could not convey,  
22 didn't have the power to convey outright ownership of the  
23 PIF to satisfy a debt that was only a fraction of its net  
24 worth, the other side argues, at Page 13 of its reply memo,  
25 that, quote, "It has already been established, as a matter

1 of law, that the net value of the PIF is less than the  
2 amount of the Ungars' judgment," close quote.

3 That contention is simply wrong. We invite  
4 Your Honor to look again at Exhibit H to the creditor's  
5 bill, which Mr. Strachman is relying on as his support for  
6 that contention. Exhibit H was a "Forbes Magazine" article  
7 dated March 9, 2006, containing the following three  
8 pertinent statements:

9 First, quote, "The Fund"-- meaning the PIF-- "even  
10 published Ernst & Young-audited financials, which showed it  
11 held \$1 billion of assets at the end of 2004," close quote.

12 Two, quote, "The Investment Fund is now believed  
13 to hold \$1.4 billion in assets," close quote.

14 And three, quote, "Abbas, a political rival to  
15 Hamas, known as Abu Marsden, made up for the Palestinian  
16 part of the shortfall by taking out about \$500 million in  
17 bank loans secured by Investment Fund assets," close quote.

18 \$1.4 billion, minus \$500 million, leaves  
19 \$900 million of assets available to satisfy the  
20 \$115 million judgment in this case. And that calculation  
21 can be confirmed-- the accuracy of that calculation can be  
22 confirmed by going to the PIF's website right now, which  
23 includes another set of Ernst & Young-audited financials as  
24 of year end 2006 that shows that PIF has a net worth of  
25 over \$800 million.

1           The Ungars were entitled to ask Your Honor, at  
2           most, for a levy against the PIF's assets up to the amount  
3           needed to pay the judgment, but there was no way they were  
4           entitled to outright ownership of the PIF, given the  
5           disparate values we're talking about.

6           On the issue of domicile, for purposes of  
7           diversity of citizenship, Mr. Strachman's reply memo  
8           argues, at Page 17, that, quote, "This Court has clearly  
9           and irrefutably established that Yaron Ungar was domiciled  
10          abroad at the time of his death," close quote.

11          Respectfully, that is a misreading of Your Honor's  
12          decision, which makes no mention whatsoever of the word  
13          "domicile." Domicile was not an issue at that time.

14          As a matter of law, somebody can live away from  
15          his domicile for 20 years, even longer than Yaron Ungar had  
16          been in Israel, but if he intends to return, that remains  
17          his domicile. Here, all we have are self-serving,  
18          incomplete and inconclusive affidavits of Amichai Ungar.

19          The other side argues that we are bound by what is  
20          said in those affidavits that his lawyers doubtless  
21          prepared for him to sign. They argue that we are precluded  
22          from cross-examining the affiant under oath to test his  
23          truthfulness. They argue that we can't conduct other  
24          discovery designed to determine whether the Ungars really  
25          were domiciled abroad. They cite no authority for such an

1 extreme position, and there is none.

2 And, finally, Your Honor, the other side argues  
3 that the suit must be dismissed because Leboeuf is merely  
4 seeking to assert a derivative claim, which it cannot do.  
5 In support of their argument, they cite the decision in  
6 Weissman-- the Weissman case, decided by the Seventh  
7 Circuit.

8 But that decision actually undercuts our  
9 adversary's position. The Court there explained that it  
10 would not allow a claim by a personal guarantor of a  
11 corporate loan because the corporation had the right to  
12 recover full damages, and the derivative claim, if allowed,  
13 would resist-- would risk double-counting.

14 No such rationale applies here. Here, a law firm,  
15 Leboeuf, has a claim directly on its own behalf for  
16 recognition of the attorney-client relationship that it has  
17 with the PIF. It's a distinct claim that is personal to a  
18 law firm and presents no issue of potential double-counting  
19 or even money damages at all. Rather, it presents issues  
20 under the Rules of Professional Conduct, separate and apart  
21 from whatever injury the PIF itself may have suffered.

22 So, in conclusion, we ask the Court to deny the  
23 motion to dismiss and allow this case to proceed on the  
24 merits of our claims.

25 Thank you, Your Honor.

1 THE COURT: All right. I'll recap what I've  
2 already said during the course of argument.

3 In the underlying case, the PA and the PLO made a  
4 strategic decision to deny that the courts of the United  
5 States had any jurisdiction over them.

6 And when this case was first brought, the Court  
7 dealt with the issue of whether there was jurisdiction, and  
8 the Court decided there was jurisdiction.

9 The PA and the PLO maintained two offices in this  
10 country, one in New York to lobby the United Nations and  
11 one in Washington to lobby the United States Government and  
12 the people of the United States of America.

13 They had bank accounts, and they were involved in  
14 making investments in this country and using banks even for  
15 international transactions in this country.

16 The Court made that determination, that there was  
17 jurisdiction and that venue was proper in this Court, and  
18 there is a written decision to that effect.

19 The next ploy utilized by the PA and the PLO was  
20 to claim sovereign immunity. Well, that was the last ploy.  
21 The Court decided twice that there was no sovereign  
22 immunity, and finally it went to the Court of Appeals, and  
23 the Court of Appeals decided that the PA and the PLO did  
24 not have sovereign immunity.

25 There was also an attempt to claim diplomatic

1 immunity, but that went by the board, along with the  
2 jurisdictional argument.

3 So the PA and the PLO made a strategic  
4 determination. It was reported to this Court by  
5 Ramsey Clark, the attorney for the PA and the PLO, that  
6 Yasser Arafat, who was the leader of the PA, that the  
7 attorneys were not to defend this case on the merits and  
8 would not be authorized to do anything on behalf of the PA  
9 and the PLO.

10 As a result of those machinations, the Court  
11 entered a default judgment of more than \$116 million for  
12 the Ungar Plaintiffs against the PA and the PLO.

13 The Court pointed out, after various post-judgment  
14 matters were brought to the Court's attention, that there  
15 were no assets of the PA or PLO in this State, and  
16 therefore, the Plaintiffs would have to seek to satisfy  
17 that judgment elsewhere.

18 After various attempts, and being unsuccessful,  
19 and being told that, under no circumstances would the PA  
20 and the PLO pay such a judgment, the Plaintiffs brought  
21 this creditor's bill in the underlying action.

22 The PA, although it had counsel present, did not  
23 dispute the creditor's bill, made no argument against it  
24 and, in effect, defaulted, as they have defaulted  
25 throughout.

1           Therefore, the Court entered judgment within the  
2           underlying case, assigning to the Plaintiffs whatever  
3           rights, intangible rights, that the PA had in two entities,  
4           the PIF and another entity, and judgment was entered.

5           As I've previously stated, the Court had  
6           jurisdiction to enter that judgment. No arguments were  
7           made against the entry of that judgment by the only party  
8           in interest, the PA, and that judgment became final.

9           And because that final judgment was entered by a  
10          Court having jurisdiction and the power and authority to  
11          enter that judgment, that judgment's entitled to full faith  
12          and credit anywhere in the United States, in every court of  
13          the United States.

14          The attempt now by Leboeuf to make the arguments  
15          that the PA should have made is to no avail. Leboeuf has  
16          no standing to make those arguments. It has no standing to  
17          contest or assail the judgment entered by this Court.

18          That's the first cause of action that's asserted  
19          in this declaratory judgment complaint, that the District  
20          Court could not properly convey ownership in the PIF.  
21          Well, the Court had jurisdiction to do it, and the Court  
22          did it. And Leboeuf is a stranger and interloper to that  
23          judgment.

24          The second cause of action is that the Ungars  
25          purported to take over the PIF, and that was ineffective



1 under applicable corporate law and under the Articles of  
2 Association of the PIF. The Leboeuf law firm has no  
3 standing to make that argument, to make that claim, to  
4 assert that claim.

5 The only persons who can make that claim are the  
6 deposed officers and directors of the PIF. They might have  
7 standing to make that claim, but of course they don't want  
8 to do that because they would submit themselves to the  
9 jurisdiction of the Court. So the Leboeuf law firm is  
10 merely a stand-in and has no standing itself to assert  
11 those claims.

12 And in any event, those claims should be asserted  
13 elsewhere, not in this Court. The Court readily concedes  
14 that it has no jurisdiction over the PIF. The PIF has no  
15 connection to Rhode Island, so far as we know. And the  
16 proper venue for the directors and officers of the PIF to  
17 make those claims is obviously where the PIF is located.

18 But, again, this is part of the international  
19 conspiracy that's been going on here, based on the decision  
20 of an arrogant despot, Yasser Arafat. And the PA and the  
21 PLO must suffer the consequences of the action taken to  
22 continue to dispute the jurisdiction of the United States  
23 Courts. Ye shall reap based on the way one sows.

24 So it is the decision of this Court that the  
25 Plaintiff, Leboeuf, Lamb, Greene & Macrae, has no standing

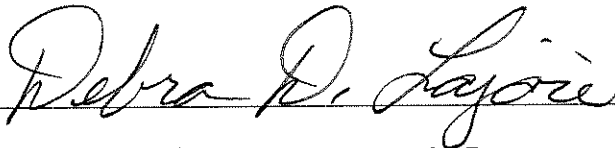
1 to assert these two causes of action that are contained in  
2 this complaint. And, therefore, this case is dismissed,  
3 and the Clerk shall enter judgment for the Defendants.

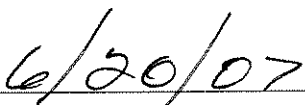
4 Enough said.

5 (The proceeding was concluded at 3:27 p.m.)  
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7  
8

9 C E R T I F I C A T I O N  
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11

12 I, Debra D. Lajoie, RPR-FCRR-CRI, do hereby  
13 certify that the foregoing pages are a true and accurate  
14 transcript of my stenographic notes in the above-entitled  
15 case.  
16

17   
18 \_\_\_\_\_  
19 Debra D. Lajoie, RPR-FCRR-CRI  
20

21   
22 \_\_\_\_\_  
23 Date  
24  
25